

REMARKS

Claims 1-37 are pending in the application. In the (final) Office Action of April 1, 2003, the Examiner objected to Claims 2, 3, 4 and 6-11 as dependent upon a rejected base claim but indicated that these claims would be allowed if rewritten in independent from. This has been done. Accordingly, amended Claims 2, 3, 4 and 6-11 are believed to be in condition for allowance (together with previously allowed Claims 12-37).

In the final Office Action, the Examiner has rejected Claims 1 and 5 under 35 U.S.C. §103(a) as unpatentable over Ferree U.S. Patent No. 6,432,107 ("Ferree") in view of Anderson et al. U.S. Patent No. 6,458,158 ("Anderson et al.").

Applicants have changed the dependency of Claim 5 from Claim 1 to amended Claim 2 which, as noted above, is believed to be in condition for allowance. Accordingly, Claim 1 is now the only rejected claim remaining in this application.

The Examiner has applied Ferree and Anderson et al. to Claim 1 as follows:

...Ferree teaches an enhanced area spinal fusion device comprising a first component 440 having upper and lower vertebral engaging surfaces and a thickness between the upper and lower surfaces, the first component being of substantially closed structure; and a second structure component 420 engagable within the first component and having a height greater than the thickness of the first component. Hence Ferree teaches all of the limitations of the present invention except that the first and second components are comprised of bone.

Anderson et al. teach a composite bone graft one embodiment of which (as depicted in Figs. 14A-14C) is a cervical wedge for use in cervical fusions comprising first and second cortical bone portions 82 held together by two cortical bone pins 7. Anderson discloses in lines 28-32 of column 1, that "the composite bone graft promotes the growth of patient bone at an implantation site by promoting osteoinductivity and cellularization". It would have been obvious to one of ordinary skill in the art at the time of the present invention to form the fusion device of Ferree of composite bone so as to "promote the growth of patient bone at an implantation site".

There is a fundamental difference between the two-part intervertebral spacer of applicants' Claim 1 and the Ferree spinal fusion device. In applicants' spacer, the second component is engagable *within* the first component. In the Ferree device, component 420 is *not* engagable *within* either of components 440. Component 420, while engagable with components 440, are *external* to components 440 and do not assume a relationship with component 420 that is to any extent *within*, or *internal* to, either or both components 440.

Applicants' claimed arrangement, nowhere disclosed or suggested in Ferree, improves fixation of the implant and substantially eliminates migration. (See, in this regard, Figs. 1 and 2 and the discussion thereof at pages 1 and 2 of the specification, in particular, page 2, lines 8 and 9).

In view of this basic and patentably distinguishing difference between applicants' implant and the Ferree device, Claim 1 herein is believed to be patentable over Ferree no matter how its teachings may be combined with Anderson et al., the latter disclosure also being devoid of any suggestion of applicants' claimed invention.

Reconsideration and allowance by the Examiner of Claims 1-37 as presented herein are respectfully requested.

Respectfully submitted,



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